



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/798,324

03/12/2004

Rory Hogan

HOGAN-0003

8808

21261

7590

10/10/2006

ROBERT PLATT BELL  
REGISTERED PATENT ATTORNEY  
P.O. BOX 310  
AURORA, NY 13026

EXAMINER

GROSSO, HARRY A

ART UNIT

PAPER NUMBER

3781

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary

Application No.

10798,324

<b>Applicant(s)</b>	
---------------------	--

HOGAN ET AL.

**Examiner**

Harry A. Grosso

Art Unit
----------

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5) ☐ Notice of Informal Patent Application  
 6) ☐ Other: \_\_\_\_\_

***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the portion of flexible material, contiguous with at least one of the first rectangular portion and the second rectangular portion, folded over (claims 5 and 14) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Double Patenting***

2. Claim 22 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 20. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 103***

3. Claims 1, 3, 4, 6, 8, 10, 12, 13, 15, 17, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson (4,540,611) in view of Mahoney, Jr. et al (6,029,847) (Mahoney).

4. Regarding claims 1, 3, 10 and 12, Henderson discloses a flexible beverage holder made from first and second rectangular portions of flexible material and a round portion with the means of attaching the rectangular portions is stitching (figures 1-10, column 2, lines 21-39).

Henderson does not teach the use of a strap on the holder. Mahoney discloses a flexible beverage holder with a strap stitched onto the side of the holder (38, Figure 1, column 2, lines 65-67) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of strap stitched to the side of the holder as disclosed by Mahoney in the beverage holder disclosed by Henderson to provide a handle for more securely gripping the holder.

5. Regarding claims 4 and 13, Mahoney discloses the strap attached to a side panel of the holder. It would have been obvious to one of ordinary skill in the art at the

time the invention was made to have attached the strap to one of the rectangular panels to prevent the strap from interfering with the folding of the holder when not in use.

6. Regarding claims 6 and 15, Henderson as modified by Mahoney discloses the claimed invention except for the width of the strap being 2.5 to 4 inches. It would have been an obvious matter of design choice to make the strap width in the range of 2.5-4 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

7. Regarding claims 8 and 17, It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the same material for the strap as used in the holder to reduce manufacturing and inventory costs and simplify to manufacturing process.

8. Regarding claims 19 and 21, Henderson as modified by Mahoney discloses a beverage holder formed from flexible material with a strap stitched to the beverage holder. Henderson as modified by Mahoney discloses the claimed invention except for the width of the strap being 2.5 to 4 inches. It would have been an obvious matter of design choice to make the strap width in the range of 2.5-4 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

9. Claims 2, 9, 11, 18, 20 and 22 rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson as modified by Mahoney in view of Wicker (6,206,223).

Henderson as modified by Mahoney discloses the invention made of a foam insulative material but does not teach the flexible material being foamed polyurethane or neoprene. Wicker discloses a beverage can holder made from foamed polyurethane (column 4, lines 26-31). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of foamed polyurethane as disclosed by Wicker in the beverage holder disclosed by Henderson and Mahoney since it is known in the art to use this material for insulated beverage holders.

10. Claims 5, 7, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson as modified by Mahoney in view of Evans et al (4,802,602).

11. Regarding claims 5 and 14, Henderson as modified by Mahoney disclosed the invention except for the portion of flexible material, contiguous with at least one of the first rectangular portion and the second rectangular portion, folded over to form the strap. Evans et al disclosed a flexible beverage holder in which a portion of the flexible material contiguous with a side of the holder is folded over to form a strap. (22, Figures 1-3 and 8, column 4, lines 40—43 and lines 61-66). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a portion of the flexible material contiguous with a side of the holder folded over to form a strap as disclosed by Evans et al in the beverage holder disclosed by Henderson and Mahoney to provide a strap to be used as a handle without requiring the operations necessary to produce a separate strap portion and attach it. It would have been obvious to one of ordinary skill in the art at the time the invention was made to

have used the same stitching methods used to attach the rectangular portions together in attaching the end of the strap to the holder thus not requiring additional attachment methods and materials.

12. Regarding claims 7 and 16, Henderson as modified by Mahoney and Evans et al discloses the claimed invention except for the width of the strap being 2.5 to 4 inches. It would have been an obvious matter of design choice to make the strap width in the range of 2.5-4 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

13. Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson as modified by Mahoney in view of Foster et al. Henderson as modified by Mahoney discloses the invention except for the strap made of the same material as the holder. Foster et al discloses a flexible beverage holder with a strap made from the same material as the holder (Figures 8-10, column 5, lines 48-59). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the same material for the strap as used in the holder as disclosed by Foster et al in the holder disclosed by Henderson and Mahoney to reduce manufacturing and inventory costs and simplify to manufacturing process.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-

4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nathan Newhouse  
Supervisory Patent Examiner  
Art Unit 3727

hag

  
Stephen Castellano  
Primary Examiner



Application/Control Number: 10/798,324  
Art Unit: 3727

Page 8